

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

**ATTORNEY GENERAL OF THE  
STATE OF OKLAHOMA, et al,**

**Plaintiff,**

**v.**

Case Number: 05-CV-329-TCK-SAJ

**TYSON FOODS, INC., et al,**

**Defendants,**

**TYSON FOODS, INC., et al,**

**Third-Party Plaintiff,**

**v.**

**CITY OF TALEQUAH, et al ,**

**Third-Party Defendants.**

**THE BERRY GROUP'S RESPONSE IN OPPOSITION  
TO DEFENDANTS/ THIRD-PARTY PLAINTIFFS' OPPOSED  
MOTION FOR LEAVE TO FILE AMEND THIRD-PARTY COMPLAINT**

COME NOW, The Berry Group of Third-Party Defendants and object to Defendants/Third-Party Plaintiffs' Opposed Motion for Leave to Amend Third-Party Complaint (Dkt. #816, the "Motion"). No ruling on the Motion should be made until the Court has decided the State of Oklahoma's motion to sever and stay or dismiss proceedings on the Third-Party Complaint (Dkt. #247), which is currently set for hearing on August 10, 2006 (See Dkt. #839). The Berry Group has filed a separate motion for dismissal or severance and stay (Dkt. #588) and joined in the State's motion. Several other Third-Party Defendants have joined in the State of Oklahoma's motion to sever, stay, or dismiss the Third-Party Complaint. It appears that all of the Motions to sever, stay, or dismiss will be considered at the hearing August 10, 2006. The just, speedy, and inexpensive determination of this action requires that this Honorable Court

make a ruling on the motions to sever, stay, or dismiss before any consideration should be given to the Defendants/Third-Party Plaintiffs' Opposed Motion for Leave to Amend Third-Party Complaint.

The Berry Group of Third-party defendants adopt and incorporate herein by reference the Plaintiff State of Oklahoma's Response to "Defendant/Third-Party Plaintiffs' Opposed Motion for Leave to File Amended Third-Party Complaint" and Request for oral Argument (Dkt. # 841 and 842), as if fully set forth herein with the caveat that the Berry Group of Third-Party Defendants believe that the only proper ruling is an order dismissing the Third-Party Complaint.

Several good and valid reasons support that this Honorable Court should make a ruling on the motions to sever, stay, or dismiss before any consideration should be given to the Defendants/Third-Party Plaintiffs' Opposed Motion for Leave to Amend Third-Party Complaint. There can be no doubt that the action initiated by the Plaintiffs against the Defendants concerns the sole issue of the effect of poultry litter admittedly disposed by the Defendants and their agents within the IRW. There also can be no doubt that the Defendants have sought by the Third Party Complaint to recast this litigation between the Plaintiffs and the Defendants as involving more than just the environmental effects of the Defendants' disposal of poultry litter within the IRW. There is no allegation in the original Third-Party Complaint or in the proposed Amended Third-Party Complaint that any of the Third-Party Defendants has in any method or manner at any time contributed in any way with the Defendants as to the disposal of poultry litter within the IRW. This litigation should be reigned in by this Honorable Court such that it addresses only the issue alleged by the Plaintiffs in the Amended Complaint – the detrimental effects on the environment of the Defendants' and their agents' past and present disposal of poultry litter within the IRW.

Focused consideration on the sole issue involved in this litigation based upon the allegations of the Amended Complaint against the Defendants leaves no question that the motions to sever, stay, or dismiss should be granted. The granting of those motions will restore focus of the action initiated by the Plaintiffs on the detrimental effects on the environment of the Defendants' and their agents' past and present disposal of poultry litter within the IRW. If the motions to sever, stay, and dismiss are granted it will not be necessary for any consideration to be given to the Opposed Motion for Leave to File Amended Third-Party Complaint. Judicial economy and the efficient management of this action counsels strongly that ruling on the motions to sever, stay, or dismiss be made before any consideration is given to amendment of the Third-Party Complaint.

The Berry Group have already incurred substantial attorneys fees and costs for defense of the original Third-Party Complaint, and The Berry Group will be required to incur substantially more attorney fees and costs should leave be granted at this time for Defendant/Third-Party Plaintiffs to amend the Third-Party Complaint. Such additional expense should be avoided by the granting of the motions to sever, stay, or dismiss. The inexpensive determination of this action weighs heavily on the Court ruling on the motions to sever, stay, or dismiss before any consideration be given to amendment of the Third-Party Complaint.

WHEREFORE, premises considered, The Berry Group of Third-Party Defendants prays the Defendants/Third-Party Plaintiffs' Opposed Motion for Leave to File Amended Third-Party Complaint be denied, or at least decision on the Motion be deferred until after the Court has ruled on the pending motions to sever, stay or dismiss, together with such other and further relief as the Court deems just and proper.

Respectfully submitted,

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*(Signed by filing attorney with permission of Mr.  
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### **CERTIFICATE OF SERVICE**

I hereby certify that on the 11<sup>th</sup> day of July 2006, I electronically transmitted a copy of The Berry Group's Response in Opposition to Third-Party Plaintiffs' Motion to Amend Third-Party Complaint to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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